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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/511,533	10/15/2004	Paolo Lameri	LAVO-37109	4414
86378	7590	11/23/2010		
Pearne & Gordon LLP 1801 East 9th Street Suite 1200 Cleveland, OH 44114-3108			EXAMINER PURDY, KYLE A	
			ART UNIT 1611	PAPER NUMBER
			NOTIFICATION DATE 11/23/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patdocket@pearne.com  
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<b>Office Action Summary</b>	<b>Application No.</b> 10/511,533	<b>Applicant(s)</b> LAMERI, PAOLO	
	<b>Examiner</b> Kyle Purdy	<b>Art Unit</b> 1611	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 October 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8,9,12,13,36,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8, 9, 12, 13, 36, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/28/2010 has been entered.

### ***Status of Application***

2. The Examiner acknowledges receipt of the amendments filed on 10/28/2010 wherein claim 8 has been amended and claim 38 and 39 are newly added..

3. Claims 8, 9, 12, 13, 36, 38 and 39 are presented for examination on the merits. The following rejections are made.

### ***Response to Applicants' Arguments***

4. Applicants arguments filed 10/28/2010 regarding the rejection of claim 37 made by the Examiner under 35 USC 112, first paragraph have been fully considered and are found persuasive. This rejection has been overcome by cancellation of the claim.

5. Applicants arguments filed 10/28/2010 regarding the rejection of claims 8, 9, 36 and 37 made by the Examiner under 35 USC 103(a) over Bratescu et al. (US 6258070) in view of Narayanan et al. (US 5176736) have been fully considered and they are found persuasive. This rejection has been overcome by amendment to the claims.

6. Applicants arguments filed 10/28/2010 regarding the rejection of claims 12 and 13 made by the Examiner under 35 USC 103(a) over Bratescu et al. (US 6258070) in view of Narayanan et al. (US 5176736), in further view of Huber-Emden et al. (US 3873703) have been fully

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considered and they are found persuasive. This rejection has been overcome by amendment to the claims.

**New Rejections**  
***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**9. Claims 8, 9, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chastain et al. (US 5294645; published 03/15/1994) in view of Matsuo et al. (US 6375965; filed 04/23/1998) and by Harr (US 4436744; published 03/13/1984).**

10. Chastain is directed to composition using menth-1-en-9-ol (menthenol herein) for use in compositions for controlling fungi populations such as *Cladosporium spp.*. Examples I-K are directed to emulsions comprising the active agent where the oil used in the emulsion can be

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either of corn or soybean oil. Example J teaches including corn oil in an amount from between 20-40% and water in an amount of between 23-74% by weight (column 8, lines 50-55).

11. Chastain fails to teach their composition being used in a method of treating a disease caused by a fungus on an agricultural cultivation. Chastain fails to teach the fungicide as being copper based fungicide such as copper oxychloride.

12. Matsuo teaches compositions for controlling harmful bio-organisms and methods for controlling them. The composition may comprise an inorganic or organic copper fungicide such as copper oxychloride (see column 4, line 65). The fungicidal composition may be a form of an emulsion where the oil used can be used to enhance the activity of the active fungicidal ingredients (see column 11, lines 15-25). Exemplified oils include corn and soybean oils. Moreover, the fungicidal compositions of Matsuo are to be used to treat tomato and citrus crops (see column 15, lines 1-25).

13. Harr is directed to fungicidal composition comprising fungicidal actives. The composition is to comprise a copper fungicide such as copper oxychloride which is taught to have fungicidal activity towards *Cladosporium spp.* (See column 6, lines 25 to column 7, line 25).

14. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Chastain, Matsuo and Harr with a reasonable expectation for success in arriving at a method of treating a harmful crop fungus by administering an emulsion comprising water from between 15-85% and soybean oil from between 85-15%, more specifically 40% by weight of soybean wherein the fungicide is copper based, such as copper oxychloride. Although Chastain fails to teach using their fungicidal

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composition on crops (i.e. citrus, tomato), using it in such a method would have been obvious as the fungicidal component is active against *Cladosporium spp* and compositions intended for agricultural use target said species. With respect to using copper oxychloride in an emulsion having the instant amounts of water and soybean oil, this would have been obvious as the both of copper oxychloride and methanol are potent fungicides that can control *Cladosporium spp.*. It's noted that in order to rely on equivalence, the equivalency must be recognized by the art. See MPEP 2144.06 II. As the art teaches that both of menthenol and copper oxychloride are fungicides capable of killing *Cladosporium*, one would have been motivated to use one in place of the other with a reasonable expectation for success in providing fungicidal benefit against *Cladosporium* to help protect crops. Therefore, the invention as a whole is *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in absence of evidence to the contrary.

### ***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kyle A. Purdy whose telephone number is 571-270-3504. The examiner can normally be reached from 9AM to 5PM.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau, can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

17. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*/Kyle Purdy/  
Examiner, Art Unit 1611  
November 10, 2010*

*/Sharmila Gollamudi Landau/  
Supervisory Patent Examiner, Art Unit 1611*